***THE HON'BLE SRI JUSTICE N.V. RAMANA**

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+WRIT PETITION NO.21966 OF 1996

%Dated 21,02.2006

#1 V. Veera Raju, S/o Gani Raju, R/o Kakinada.

..... PETITIONER

VERSUS

$ 1 The Executive Engineer, Civil Engineering Department, APSRTC, Rajahmundry and others.

.....RESPONDENTS

! Counsel for Petitioner: Sri T. Dasaradha Ramayya

^ Counsel for Respondents: Smt. B.G.V. Madhavi, Standing Counsel for APSRTC.

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? Cases referred:

1. **(1994) 5 SCC 304**
2. **(1994) 5 SCC 313(I)**
3. **(1997) 10 SCC 754**
4. **(1997) 11 SCC 1**
5. **(2000) 4 SCC 245**
6. **(2001) 1 SCC 298**
7. **(2001) 7 SCC 1**
8. **(2003) 4 SCC 317**
9. **(2003) 7 SCC 488**

10. **(2004) 1 SCC 126**

11. **(2004) 3 SCC 553**

12. **(2002) 3SCC 25**

13. **(2005) 5 SCC 100**

14. **(2005) 8 SCC 481**

15. **(2004) 8 SCC 195**

16. **(2005) 8 SCC 750**

17. **(2006) 1 SCC 106**

18. **(2006) 1 SCC 337**

THE HON'BLE SRI JUSTICE N.V. RAMANA

W.P. No. 21966 of 1996

O r d e r:

The petitioner claims to have been working Man Mazdoor with the respondents-APSRTC since 01.05.1986 in their Civil Engineering Department, and posted at their various offices. While so, the respondents called the casual/contract workers for interview for regularization, and he being one among them, attended the interview held on 04.12.1992. However, he was not selected. Hence, he filed the present writ petition seeking a direction to the respondents to regularize his services.

Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondents-APSRTC.

The learned counsel for the petitioner submits that the petitioner is working as Man Mazdoor with the respondents-APSRTC since 01.05.1986, and he having put in more than 240 days of service in a year, as per Circular No. PD 163/89, dated 20.12.1989, issued by the respondents, is entitled to be regularized into service, but the action of the respondents in not regularizing his services is illegal and arbitrary. He submits that though the petitioner has to approach the Industrial Tribunal and raise an industrial dispute under the Industrial Disputes Act, 1947, but having regard to the fact that the petitioner is continuing in service by virtue of the interim order of this Court, a direction be given to the respondents to regularize his services or in the alternative, the petitioner be permitted to raise an industrial dispute before the Industrial Tribunal, and until the industrial dispute is settled by the Industrial Tribunal, the respondents be directed to continue the petitioner in service. In support of his contention that the petitioner is entitled to be regularized, that contractual

engagement of the petitioner into service is merely a camouflage not to regularize the services of the petitioner and that this Court in exercise of its jurisdiction in appropriate cases entertain a writ petition despite existence of disputed questions, relied upon several decisions of the apex Court in **R.K. Panda v. Steel Authority of India**, **United Mines Mazdoor Union v. Steel Authority of India**, **International Airports Authority Employees' Union v. Airport Authority of India**, **Rashtria Chturth Shreni Railway Majdoor Congress (INTUC)**, **Indian Overseas Bank v. I.O.B. Staff Canteen Workers' Union**, **VST Industries Ltd v. VST Industries Workers' Union**, **Steel Authority of India Ltd. v. National Union Waterfront Workers**, **Rourkela Shramik Sangh**, **Mishra Dhatu Nigam Ltd. v. M. Venkataiah**, **Ram Singh v. Union Territory, Chandigarh** and **ABL International Ltd. v. Export Credit Guarantee Corpn. Of India Ltd.**.

The respondents filed counter-affidavit. The learned Standing Counsel based on the counter averments submitted that the petitioner was never engaged by the respondents directly, he might have been engaged by civil contractors in the Civil Engineering Department, and the labour so engaged by the civil contractors to execute the works of the respondents, cannot contend that since they were engaged to execute the works of the respondents, they should be treated as having worked under the respondents. He submitted that the petitioner did not possess even the minimum educational qualifications, and therefore, he was not selected in the interview, and as such, his non-selection cannot be said to be illegal and arbitrary.

The law is well settled that the High Court in exercise of its power under Article 226 of the Constitution does not adjudicate disputed questions of fact, which require leading of and consideration of evidence. Though the petitioner in support of his contention that there is no absolute bar for the High Court to entertain a writ petition in appropriate cases, even if the same arises out of a contractual obligation and/or involves some disputed questions of fact on the judgment of the apex Court in **ABL International Ltd. v. Export Credit Guarantee Corpn. Of India Ltd.**, the fact remains that in the said case, there were no serious disputes involved, except dispute with regard to the meaning of a clause of the insurance contract, and it is in those circumstances, the apex Court held that if such an objection as to disputed questions or interpretations is raised in a writ petition, the courts can very well go into the same and decide that objection if facts permit. But in the instant case, the facts as stated by the petitioner are seriously disputed by the respondents.

Though the petitioner contends that he worked as Man Mazdoor for more than 240 days in a year continuously and is entitled to for regularization, the same is disputed respondents stating that they never engaged the petitioner directly and that he might have been engaged by civil contractors in the Civil Engineering, and that the employees engaged by the civil contractors cannot be treated to have worked under them. Whether the petitioner was engaged by the respondents directly or was employed through the contractor, or whether the employment of the petitioner through the contractor was a camouflage to deny the petitioner the benefit of regularization, whether the petitioner worked for more than 240 days in a year continuously without break in service and whether the Civil Department in which the petitioner is said to have worked comes under the direct control of the respondents

or not, are all disputed questions of fact, which cannot be gone into in a writ petition under Article 226 of the Constitution of India.

Given the fact that disputed questions of fact, as stated above, are involved in the writ petition, reliance placed by the learned counsel for the petitioner in support of his various contentions do not help him.

In **Range Forest Officer v. S.T. Hadimani**, the apex Court held that onus is on the workman to prove that he has worked for more than 240 days. The same view was reiterated by the apex Court in **Manager, Reserve Bank of India v. S. Mani**, **Batala Co-op. Sugar Mills Ltd. v. Sowaran Singh** and **Municipal Corpn., Faridabad v. Shri Niwas**, **Surendranagar District Panchayat v. Dahyabhai Amarsinh** and **R.M. Yellati v. Asst. Executive Engineer**. Very recently, the apex Court in **ONGC Ltd. v. Shyamlal Chandra Bhowmik**, while reiterating this view, held that the High Courts should not entertain writ petitions directly when claim of more than 240 days service in a year is raised, and that the said question being a question of fact, was not to be examined by the writ petition and the proper remedy for the workman raising such claim is to raise an industrial dispute under the Industrial Disputes Act, 1947 so that evidence can be analyzed and a conclusion arrived at.

In the above view of the matter, the remedy of the petitioner is to raise an industrial dispute before the Labour Court under Section 11-A of the Industrial Disputes Act, 1947.

It is the contention of the learned counsel for the petitioner that since this Court had held that the remedy of the petitioner is to raise an industrial dispute before the Labour Court, the respondents be directed to continue the petitioner in service till the Labour Court disposes of the industrial dispute to be raised by him, and more so when the petitioner by virtue of the interim order passed by this Court had continued in the service till today. I am afraid, I cannot accede to such a contention for the reason that merely because this Court during the pendency of the writ petition had directed the respondents to continue the petitioner in service it does not mean that this Court had created any right, much less vested right in the petitioner to be continued in service. Once the writ petition is dismissed, any interim orders passed therein during its pendency, would automatically come to an end. Therefore, the petitioner cannot seek the benefit of the interim order till the proceedings before other statutory authority are concluded, and more so when the respondent has disputed the relationship of employee and employer between them.

In the result, the writ petition is dismissed. The petitioner is at liberty to raise industrial dispute before the Labour Court under Section 11-A of the Industrial Disputes Act, 1947. No costs.

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N.V. RAMANA, J.

Date: 21st February, 2006.

Note:

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(B/o)

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